IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2932 OF 2001

1. Mr.Ramgonda Layappa Birajdar
2. Mr.Annappa Shivappa Chougule
3. Mr.Ramgonda Tipanna Birajdar
4. Mr.Annappa Madappa Suslad
5. Mr.Chandsaheb Lalasaheb Sanadi
6. Mr.Somling Avadhoota Birajdar
7. Mr.Bileni Gadajappa Todalbagi
8. Mr.Sidgonda Genappa Birajdar
9. Mr.Vithal Gadajappa Todalbagi
10. Mr.Madappa Malappa Patadodar
11. Mr.Amsiddha Somanna Patil
12. Mr.Mallikarjun Annaraya Patil
13. Mr.Chidanand Annaraya Patil
14. Mr.Somling Tippanna Birajdar
15. Mr.Ramchandra Kamgonda Khot
16. Mr.Shivappa Bhimanna Suslad
17. Mr.Mirasaheb Alisaheb Sanadi
18. Mr.Suresh Amsiddha Mailpure
    (All Nos. 1 to 18 abvoenamed,
    adults, Occ: Agriculturists,
    r/o At & Post Bhivargi,
    Taluka-Jat, District-Sangli)

19. Mr.Siddhana Sabu Sutar
20. Mr.S.T. Junnedi (Makandar)
21. Mr.Basappa Irappa Sutar
22. Mr.Arjuna Sabu Sutar
    (All Nos.19 to 22 abovenamed,
    adults, Occ:Agriculturists,
    r/o At & Post Karajgi,
    Taluka-Jat, District:Sangli.) ...Petitioners.

Versus

1. Special Land Acquisition
   Officer No.6, having his
   office at Mehsool Bhuvan,
   Miraj,Dist-Sangli.

2. The Collector, District-Sangli,
   Sangli.

3. The Divisional Commissioner,

Pune Division,Pune

4. The State of Maharashtra through
its revenue and Forest department,
Mantralaya Mumbai.

(All respondent Nos.1 to 4
abovenamed are to be served through
the Additional Government Pleader,
Appelalte Side, High Court,
Mumbai. ..... Respondents.

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Shri R.V.More for the petitioner.

Shri A.A.Kumbhakoni, Associate Advocate General with Shri S.R.Nargolkar,A.G.P. for Respondent Nos. 1 to 4.

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WITH

WRIT PETITION NO.1437 OF 2002

1. State of Maharahstra through
Collector, District Sangli

2. Special Land Acquisition Officer
No.6, Sangli

3. Commissioner, Pune Division
having their office at Council Hall,
Pune.

4. Principal Secretary,
Department of Revenue and Forests,
State of Maharashtra,Mantralaya,
Mumbai. .. Petitioners.

Versus

1. Shri Apparaya Amagonda Khade
1A. Shri Malasidha Amagonda Khade
2. Shri Shivalinga Mallappa Dugane
3. Shri Shivalinga Mallappa Dugane
4. Shri Jindabai Mohd. Mullah
5. Shri Bismilla Sahebso Makandar

6. Shri Hussainbi Gulab Makandar
7. Shri Hasim Peer Suleman Mullah
8. Shri Pandhari Bhimanna Bajbalkar
9. Shri Mariappa Kariappa Khilare
10. Shri Bialani Ningappa Ugar
11. Shri Manageni Rama Duga
12. Shri Kashinath Rama Dugal
13. Shri Appa Rama Dugal
14. Shri Sidha Rama Dugal
15. Shri Apparaya Sabu Kaikadi
16. Shri Raju Sabu Kaikadi
17. Shri Girmalla Ningappa Bijargi
18. Shri Basavanta Bapuraya Patil
19. Shri Kallappa Rama Bajbalkar
20. Shri Bassappa Annappa Birajdar (Patil)
21. Shri Hanumantha Annappa Birajdar
22. Shri Erappa Annappa Birajdar
23. Shri Amagonda Appa Birajdar
24. Shri Belan Sidha Deo
25. Shri Somaling Sivappa Birajdar
26. Shri Malleshpa Bapuraya Patil
27. Shri Mallikarjun Annaraya Patil
28. Shri Annaraya Shivgonda Patil
29. Shri Chidananda Annaraya Patil
30. Shri Basavraj Annaraya Patil
31. Shri Shankargonda Honagonda Patil
32. Shri Tamaraya Amagonda Bagali
33. Shri Ramu Ishwar Chouraghol
34. Shri Laxman Ishwar chourghol
35. Smt.Savithri Sidharood Jatti
36. Smt.Savithri Sidharood Jatti
37. Smt.Laxmibai Nilappa Bijargi
38. Shri Somaling Avadhut Birajdar
39. Shri Ningappa Sidharam Jadaver
40. Shri Matkari Mudappa Jadaver
41. Shri Avadhut Amanna Jadaver
42. Shri Mallappa Amanna Jadaver
43. Shri Vittal Gadageppa Todalbagi
44. Smt.Gangabai Mallappa Patil
45. Shri Abanna Majappa Pujari
46. Shri Shivappa Abanna Pujari
47. Shri Somanna Sidgonda Birajdar
48. Shri Bilyan Sidhadeo
49. Shri Amasidha Avadhut Birajdar
50. Shri Sidhagonda Jeneppa Birajdar
51. Shri Amanna Rangappa Birajdar
52. Shri Bilayani Sidhadeo
53. Shri Somling Madappa Birajdar
54. Shri Avadhut Madappa Birajdar
55. Devasthan Vyavasthapan Samiti,

Western Maharashtra, Kolhapur.
56. Shri Bilayani Sidhadeo
57. Shri Kulasumbi Abbas Makandar
58. Shri Bilayani Sidhadeo
59. Shri Avanna Maharaja Jadevir
60. Shri Gopal Muttyappa Vadipaj
61. Shri Biayani Sidhadeo
62. Shri Madappa Birajdar
63. Devasthan Vyavasthapan Samiti, Paschim Maharashtra, Kolhapur.
64. Shri Bilayani Sidhadeo
65. Shri Sidhappa Ogyappa Birajdar
66. Devasthan Vyavasthapan Samiti, Paschim Maharashtra, Kolhapur.
67. Shri Bilayani Sidhadeo
68. Shri Anagonda Ningappa Narute
69. Shri Shankargonda Vangonda Patil
70. Shri Reveangonda Vangonda Patil
71. Shri Mahadeo Bhimrao Pujari
72. Shri Revensidha Birajdar
73. Shri Annaraya Shivagonda Patil
74. Shri Sangappa Sidaningappa Bijargi
75. Shri Bilyani Sidaningappa Todalbagi
75A. Shri Lingappa Sidaningappa Todalbagi
76. Shri Somalinga Madappa Birajdar
76A. Shri Avadhut Madappa Birajdar
77. Negonda Sidhappa Birajdar
78. Shri Balasaheb Sidhappa Birajdar
79. Shri Appasaheb Sidhappa Birajdar
80. Shri Yashwant Sidhappa Birajdar
81. Shri Ogyappa Sidhappa Birajdar
82. Shri A.P.K.Mother Putlabai
83. Shri Madappa Avadhut Birajdar
84. Shri Shankar Kamgonda Khot
85. Shri Kamanna Bhimanna Karande
86. Shri Basappa Adyappa Rajgare
87. Shri Bhimanna Ogyappa Karande
88. Shri Sujakka Ogyappa Karande
89. A.P.K. Kanchan Bhimanna Karande
89A. Shri Koteba Bhimanna Karande
90. Shri Amanna Rangappa Birajdar
91. Shri Hussainso Abdulso Makandar
92. Shri Sadhashiv Thippanna Pujari
93. Shri Avadhut Gadgeppa Todalbagi
94. Smt.Krishnabai Sidhappa Todalbagi
95. Shri Bilayani Sidhadeo Vahivatdar
96. Shri Madgonda Punagonda Pujari
97. Shri Amagonda Iragonda Bagali
98. Shri Somesh Iragonda Bagali
99. Smt.Rakmabai Iragonda Bagali

100. Shri Basavant Iragonda Bagali
101. Shri Shivagonda Iragonda Bagali
102. Shri Ramesh Iragonda Bagali
103. Smt.Akubai Namdeo Patil
104. Shri Gagangonda Iragonda Bijargi
105. Shri Ogyappa Gangappa Malagonda
106. Shri Mahadeo Bhimrao Pujari
107. Shri Sidhappa Malkappa Chougule
108. Shri Basappa Malkappa Chougule
109. Shri Shankar Malkappa Chougule
110. Shri Mallappa Malkappa Chougule
111. Shri Ogyappa Gangappa Malagonda
112. Shri Ramagonda Giramalla Bijargi
113. Shri Vithobha Amegi Birajdar
114. Shri Bhimrao Ramchandra Kulkarni
115. Shri Sidhanna Yalagonda Birajdar
116. Shri Amsidha Parsappa Rangade
117. Smt.Sakhu Rangade
118. Shri Adyappa Kallappa Rangade
119. A.P.K.Kallappa
120. Shri Madappa Jagappa Birajdar
121. Shri Laxman Kallappa Birajdar
122. Shri Shrigonda Satyappa Birajdar
123. Shri Nigonda Sidhapa Birajdar
124. Shri Balasaheb Sidhappa Birajdar
125. Shri Appasaheb Sidhappa Birajdar
126. Shri Yashwant Sidhappa Birajdar
127. Shri Ogyappa Sidhappa Birajdar.
128. A.P.K.Putlabai
129. Shri Nigappa Sidharam Jadvir
130. Shri Basappa Annappa Patil
131. Shri Avadhut Advyappa Pujari
132. Shri Shivappa Muryappa Todalbagi
133. Shri Madappa Muryappa Todalbagi
134. Shri Madappa Muryappa Todalbagi
135. Shri Amasidha Muryappa Todalbagi
136. Shri Bilyani Sidhanigappa Todalbagi
137. A.P.K.Mother Gaorava
138. Shri Vithobha Mallappa Patil
139. Shri Basappa Mallappa Patil
140. Shri Bilyani Sidhmallappa Patil
141. Shri Channappa Gurusatappa Nagne
142. Shri Turesh Amasidha Mailapur
143. Shri Bashwantraj Mallikarjun Somling Mailapur
144. Shri Mallikarjun Bilyani Birajdar
145. Shri Amasidha Birajdar
146. Shri Bilyani Madappa Birajdar
147. Shri Tukaram Madappa Birajdar
148. Shri Madappa Mallappa Patdwar

149. Shri Shivappa Madgonda Suslad
150. Shri Anappa Madgonda Suslad
151. Shri Ramchandra Mahadeo Suslad
152. Shri Basavraj Somling Mailapur
153. Shri Anappa Mallappa Birajdar
154. Shri Bilyani Gidgappa Todalbagi
155. Shri Maulaso Alisso Sanadi
156. Shri Nanaso Alisso Sanadi
157. Shri Aminso Gindaso Sanadi
158. Shri Bilyani Sadhadeo
159. Shri Sidhagonda Giniappa Birajdar
160. Shri Bilyanideo Vahivatdhar
161. Shri Dhanappa Ambana Pujari
162. Shri Shivappa Amabana Pujari
163. Shri Bilyani Sidhadeo Vahivatdar
164. Shri Madagonda Kallappa Pujari
165. Shri Bilyani Kallappa Pujari
166. Shri Amagonda Kallappa Pujari
167. Shri Bilyani Sidhadeo Vahivatdar
168. Shri Sidhappa Ogyappa Pujari
169. Shri Bilyani Sidhadeo Vahivatdar
170. Shri Somalinga Shivappa Birajdar
171. Shri Bilyani Sidhadeo Vahivatdar
172. Shri Sidhagonda Elappa Birajdar
173. Devasthan Vyavasthapak Samiti,
Paschim Maharashtra, Kolhapur.
174. Shri Bilyani Sidhadeo Vahivatdar
175. Shri Dhanappa Ambana Pujari
176. Shri Shivappa Ambana Pujari
177. Devasthan Vyavasthapak Samiti
Paschim Maharahstra , Kolhapur
178. Shri Bilyani Sidhadeo Vahivatdar
179. Shri Madagonda Punagonda Pujari
180. Devasthan Vyavasthapak Samiti,
Paschim Maharashtra, Kolhapur.
181. Shri Bilyani Sidhadeo Vahivatdar
182. Shri Sidhappa Ogyappa Pujari
183. Devasthan Vyavasthapak Samiti
Paschim Maharashtra,Kolhapur
184. Shri Bilyani Sidhadeo Vahivatdar
185. Shri Somlingappa Ogyappa Birajdar
186. Devasthan Vyavasthapak Samiti,
Paschim Maharashtra Kolhapur.
187. Shri Bilyani Sidhadeo Vahivatdar
188. Shri Avadhut Birajdar
189. Shri Somlinga Birajdar
190. Shri Ningappa Birajdar
191. Shri Ramgonda Birajdar
192. Shri Bilyani Sidhadeo Vahivatdar
193. Shri Vithobha Amsidha Birajdar

194. Shri Dhondiba Vithoba Birajdar
195. Shri Sangappa Vithoba Birajdar
196. Devasthan Vyavasthapak Samiti,
Paschim Maharashtra Kolhapur.
197. Shri Bilyani Sidhadeo Vahivatdar,
198. Shri Ramchandra Vannappa Birajdar.
199. Devasthan Vyavasthapak Samiti,
Paschim Maharashtra Kolhapur.
200. Shri Senappa Vanappa Chougule,
201. Shri Annaraya Shivagonda Patil,
202. Shri Shankargonda Vannagonda Patil,
203. Shri Revangonda Vannagonda Patil,
204. Shri Sadanand Ishwargouda Patil,
205. Shri Shivappa Nandappa Chougule,
206. Shri Annappa Shivappa Chougule,
207. Smt.Bhagirathi Annappa Chougule,
208. Shri Amanna Dharmanna Hanjagi,
209. Shri Shivappa Irappa Hanjagi,
210. A.P.K.Irappa,
211. Shri Shivappa Bhimanna Suslad,
212. Shri Vithal Bhimanna Suslad,
213. Shri Bhauso Bhimanna Suslad,
214. Shri Madagonda Basagonda Birajdar,
215. A.P.K.Kamanna,
216. Shri Pralhad Bhimanna Jadhav,
217. Shri Shivappa Motyappa Todalbagi,
218. Shri Dundavva Appasaheb Patil,
219. Shri Annaraya Shivappa Valanchi,
220. Shri Amasidha Avadhut Birajdar,
221. Shri Sidhavva Annaraya Valanchi,
222. Shri Ramagonda Layappa Birajdar,
223. Shri Avadhut Tippana Patil (Birajdar),
224. Shri Sayavva Tippana Birajdar,
225. Shri Saibanna Ogyappa Birajdar,
226. Shri Ramagonda Layappa Birajdar,
227. Shri Amasidha Somanna Patil,
228. Shri Somaling Tippana Birajdar,
229. Shri Nigonda Tippanna Birajdar,
230. Shri Amasidha Somaling Birajdar,
231. Shri Ramappa Jakappa Birajdar,
232. Shri Shivappa Avadhut Birajdar,
233. Shri Bilyani Amogi Birajdar,
234. Shri Vithoba Amogi Birajdar,
235. Shri Shivabala Amogi Birajdar,
236. Shri Guruninga Bilyani Birajdar,
237. Shri Sidhappa Bilyani Birajdar,
238. Shri Ballappa Bilyani Birajdar,
239. Shri Vithal Gadageppa Todalbagi,
240. Shri Laxman Irgonda Bagali,
241. Shri Shivagonda Nigappa Birajdar,

242. Shri Kamanna Nigappa Birajdar,
243. Shri Mallikarjun Annaraya Patil,
244. Shri Shivagonda Ishwargonda Patil,
245. Shri Sadananda Ishwargonda Patil,
246. Shri Ramchandra Bamgonda Khot,
247. Shri Mallappa Malkappa Chougule,
248. Shri Sidhappa Malkappa Chougule,
249. Shri Sidharam Sharanappa Malagonda,
250. Shri Shivappa Nandappa Chougule,
251. Smt.Sharava Madappa Chougule,
252. Shri Ramchandra Kamagonda Khot,
253. Shri Sidharam Sharanappa Malagonda,
254. Smt.Sharava Madappa Chougule,
All major, Occ: all Agriculture,
All residents of Village Bhivargi,
Taluka-Jat, District - Sangli.
255. Shri Basappa Bhairappa Mahaddana,
256. A.P.M.Kasturi,
257. Shri Sidhappa Sabu Sutar,
258. Shri Virpaksha Fakruddin Maqbul,
259. Shri Sidhappa Channappa Laturkar,
260. Shri Bhimanna Shivappa Katti,
261. A.P.K.Mother, Tayavva,
262. Shri Sidhgonda Vithal Revi,
263. Shri Shivaraya Vithal Revi,
264. A.P.K.Mother, Kasavva,
265. Shri Saibana Guruningappa,
Akkalkot,
266. Shri Abdul Rehman Saibu Birajdar,
267. Shri Taparpasha Abdul Kader Birajdar
268. Shri Danappa Chanabasu Patanshetty,
269. Shri Arjun Sabu Sutar,
270. Shri Basappa Irappa Sutar,
271. Shri Saheb Pasha Abudul Kader Mirajdar,
272. Shri Basappa Irappa Sutar,
273. Shri Arjun Sabu Sutar,
274. Shri Suleman Mohmedso Mullah,
275. Shri Nabisaheb Mohmedso Mullah,
276. Shri Ramzansaheb Mohmedso Mullah,
277. Shri Saheblal Mohmedso Mullah,
278. Shri Revan Sindha Nagappa Birajdar,
279. Shri Sidhappa Sabu Sutar,
All major, Occ: All Agriculture,
All residents of village Karajagi,
Taluka-Jat, District - Sangli.
280. Shri Dattatraya Sambhaji Doiphode,
Major (At present under Suspension)
Taware Colony, Aranyeshwar, Pune. ...Respondents

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Shri A.A.Kumbhakoni, Associate Advocate General with Shri S.R. Nargolkar,A.G.P. for the Petitioner.

Shri R.V. More for Respondent Nos.1, 1-A, 18, 26 to 32, 37 to 40, 44, 47, 49 to 53, 54, 65, 69, 70, 73 to 75, 76-A, 78, 84, 90, 93, 97 to 105, 107 to 110, 112, 116, 118 to 121, 124, 129, 132 to 135, 137, 139, 140, 143, 148 to 152, 154, 159, 162 to 166, 168, 170, 175, 176, 182, 185, 189 to 191, 193, 198, 201 to 207, 211 to 213, 217, 221 to 229, 231, 233, 235 to 238, 240, 243 to 246, 248, 249, 251 to 254, 257, 259, 265, 270, 272, 273 and 276.

None for rest of the respondents, though served.

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CORAM: R.M.S.KHANDEPARKAR &
V.M.KANADE,JJ.
DATE : 14th October 2005.

-ORAL JUDGMENT (PER R.M.S.KHANDEPARKAR,J)-

1. Both these Petitions arise out of an award dated 23rd March 2000 passed under Section 11 of the Land Acquisition Act 1984, hereinafter called as "the said Act." While the Writ Petition No.2932 of 2001 has been filed by the claimants seeking direction for disbursement of amount to them in accordance with the said award consequent to acquisition of their land, the Writ Petition No.1437 of 2002 has been filed by the State Government challenging the said award on various grounds including the ground relating to abuse of powers amounting to fraud by the Land Acquisition Officer in the matter of fixation of compensation to be awarded to the

claimants.

2. By Notification issued under Section 4 of the said Act on 30th October 1997, certain pieces of land belonging to the respondents and situated in the village of Bhivargi and Karajagi in the Taluka-Jath District-Sangli, admeasuring about 293.47 hectares were sought to be acquired by invoking provisions of Section 17(4) of the said Act. The possession of the land was taken in April 1997 on payment of 80% of the price of the lands as the compensation in advance to the petitioners. The declaration under Section 6 was issued on 19th March 1998 and the award was passed on 23rd March 2000. Meanwhile though Notices under Section 9(3) were issued on 26th March 1998, but in response thereof no claim was received from the interested persons.

3. After the declaration of award, there was report made by the Collector of Sangli on 14th February 2001 alleging various irregularities having been committed in relation to the assessment procedure by the Land Acquisition Officer while fixing the compensation, as also of non compliance of conditions attached to approval order by the Government in respect of award in the proceedings in question. Consequent thereto, further

enquiries were conducted and it is the contention of the State that the enquiries revealed various acts on the part of the Land Acquisition Officer disclosing commission of fraud in relation to compensation awarded under the said award as well as in respect of disbursement of amount awarded thereunder. Since the Petitioner-State in view of the provisions comprised under Section 50 of the said Act being unable to make reference under Section 18 of the said Act, has filed the present petition. It is the case of the State that while approving the proposed draft of the award, the Government had brought to the notice of the Land Acquisition Officer certain irregularities and the approval was subject to specific conditions to the effect that the Land Acquisition Officer was required to re-assess the land as he had ignored different classes of land as well as the law laid down by the Apex Court, as also the guide-lines laid down by the Government in relation to the value of the land and the procedure to be followed by the Land Acquisition Officer in that regard. It is the case of the State that, if the Land Acquisition Officer were to follow those guide-lines and statutory provisions in relation to the methodology for the purpose of assessing compensation to be awarded for the land acquired, the compensation which could have been awarded to the

respondents, would have been much less than what has been awarded under the impugned award. Plain reading of the impugned award, according to the State, discloses a clear case of abuse of powers by the Land Acquisition Officer as also malafide exercise of discretion in awarding the compensation contrary to the conditional approval granted by the Government and various decisions of the Apex Court as well as of this Court on the point of fixation of compensation in such cases. The very act of ignoring specific direction issued by the Government while granting the approval would disclose a clear case of abuse of powers by the Land Acquisition Officer, more particularly bearing in mind the provisions of Section 11 of the said Act. Reliance is placed in the decisions of Apex Court in the matter of **Santosh Kumar and others v/s Central Warehousing Corporation and another** reported in 1986(2)CC 343; **Envelop Lignite Corporation Limited vs Special Tahsildar (Land Acquisition),** reported in (1995) 1 SCC 221 and **Commissioner of Customs, Kandla versus Essar Oil Limited and others,** reported in 2004 **(11)** SCC 364 in support of contentions sought to be canvassed on behalf of the Petitioner-State.

4. On the other hand, it is the case of the claimants that the valuation of land has been done on the basis of

the materials available before the Land Acquisition Officer and by following normal procedure which is adopted in all other land acquisition cases, and therefore, no fault can be found with the impugned award. Besides, it is not permissible for the State to seek interference with such award in writ jurisdiction, as, in case it being aggrieved by the fixation of compensation on account of acquisition of land, the Government being the acquiring authority is an interested person within the meaning of the said expression under section 18 of the said Act, and therefore, can prefer reference under section 18 of the said Act. Since alternative remedy is available to the State under Section 18 of the said Act, there is no case for interference in the impugned award in writ jurisdiction. Reliance is sought to be placed in the decision of **Himalaya Tiles and Marble (P) Limited versus Francis Victor Coutinho (dead) by LR's,** reported in AIR 1980 SC 1118. It is also the case of the claimants that fixation of compensation in exercise of powers under section 11 being done after hearing the parties and based on the materials placed on record, it can be said that it is a case of error in Judgement, but that by itself cannot be construed to be an abuse of power or malafide exercise of discretion by the Land Acquisition Officer amounting to fraud warranting

interference in the writ jurisdiction and therefore, under no circumstances, it can be said that the petitioners have made out any case for interference in writ jurisdiction in the impugned award.

5. Upon hearing the learned advocates for the parties and on perusal of the records first point which arises for consideration is, whether in writ justification the Court can interfere in the award passed under section 11 of the said Act on the ground of fraud or abuse of powers by the Land Acquisition Officer while declaring the award The next question therefore, arises for consideration is, whether the facts of the case placed before us disclose any such fraud having been played in the matter of declaration of award by the Land Acquisition Officer in relation to the impugned award.

6. Proviso to section 50(2) provides that no local authority or Company shall be entitled to demand reference under section 18. Section 18(1) provides that any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector, for the determination of the Court, whether his objection be to the measurement of the land, the amount of the

compensation, the person to whom it is payable or the apportionment of the compensation among the persons interested. The term "person interested" has been defined to include all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act.

7. The reference under Section 18 is essentially in relation to four factors. Firstly, measurement of land, amount of compensation, person to whom it is payable and the apportionment of compensation amongst the persons interested. However, all these four factors are related to the person interested who does not accept the award. In fact the very provision opens with the expression that "any person interested who has not accepted the award ....." The fact of acceptance or non-acceptance of the award would therefore relate to the persons who have the said option. Undoubtedly, it can be said that beneficiary of the acquisition proceedings in the sense for whose benefit the land is acquired would have an option either to accept or to challenge the award. In that sense, it can very well be said that the beneficiary of land, consequent to the acquisition thereof, could be said to be an aggrieved person and therefore, person interested within the meaning of the said expression

under section 18 of the said Act. However, at the same time, it is to be noted that Section 50(2) specifically provides that no such beneficiary would be entitled to demand a reference under section 18 of the said Act. There being specific provision debarring the right to make reference under Section 18 to such beneficiary, who can otherwise be termed as person interested, and bearing in mind the provisions of Section 12(1) of the said Act, the only option which would be available to such beneficiary or the Government in case of any illegality committed by the Land Acquisition Officer in relation to the award declared under Section 11 of the said Act including the matters in respect of quantum of compensation would be by way of a writ petition.

8. The Apex Court in **Neyvely Lignite Corporation Ltd.'s case (Supra)** while dealing with the provisions of law comprised under Section 50(2), held that,"when the award made under section 11 of the Collector is vitiated by fraud, collusion or corruption, the beneficiary is entitled to challenge it in the writ petition apart from the settled law that the conduct of the Collector of Civil Judge is amenable to disciplinary enquiry and appropriate action." It is to be noted that the said observation was made after taking note of the earlier

decision of the Apex Court in **Himalaya Tiles and Marble (P) Ltd.'s case (Supra)**.

9. As regards the concept of fraud in public law or administrative law, the Apex Court referring to the observations by Lord Bridge in **Khawaja v/s Secretary of State for the Home Department,** reported in 1983 Volume I All England Reports 765 had clearly ruled that, the "fraud" in public law is not the same as fraud in private law, nor can the ingredients, which establish "fraud" in commercial transaction, be of assistance in determining fraud in administrative law. The Apex Court has further held that "Fraud" in relation to the statute must be a colourable transaction to evade the provisions of a statute." While reiterating the observations of Lord Bridge the Apex Court held that," It is dangerous to introduce maxims of common law as to effect of fraud while determining fraud in relation to statutory law." The observations of Lord Bridge in the said case were that, "Present day concept of fraud on statute has veered round abuse of power or malafide exercise of power. It may arise due to overstepping the limits of power or defeating the provision of statute by adopting subterfuge or the power may be exercised for extraneous or irrelevant considerations. The colour of fraud in public

law or administration law, as it is developing, is assuming different shades. It arises from a deception committed by disclosure of incorrect facts knowingly and deliberately to invoke exercise of power and procure an order from an authority or tribunal. It must result in exercise of jurisdiction which otherwise would not have been exercised."

10. It is to be noted that first proviso to section 11(1) of the said Act clearly provides that no award shall be made by the Collector under this sub-section without the previous approval of the appropriate Government or of such officer as the appropriate Government. In other words the previous approval of the Government is a pre-condition for exercise of power by the Collector under section 11 to declare the award in relation to the land acquired. In the absence of previous approval if the award drafted by the Collector is made public, it would clearly amount to an act of abuse of power, amounting to fraud as stated hereinabove and therefore, would warrant interference in writ jurisdiction.

11. Shri Kumbhakoni, the learned Associate Advocate General, has drawn our attention to the approval which

was granted in the case in hand on 22nd March 2000 to the award in question. Perusal of the said approval letter and the impugned award discloses that though there were various conditions imposed while granting the approval, more particularly in relation to the requirement of consideration of the nature of the land for the purpose of evaluating the value thereof and deletion of compensation which was awarded in relation to trees in addition to the compensation awarded on the basis of valuation of land, the Land Acquisition Officer did not pay any attention to those conditions. The impugned award, apparently discloses the various types of land. Merely because a part of land happens to enjoy perennial water facility, the entire piece of land is considered to be a land having perennial water facility and on such assumption the Land Acquisition Officer has proceeded to fix the market value in respect of land. The approval specifically required the Land Acquisition Officer to consider the nature of land and thereafter to fix the market value. Obviously the Land Acquisition Officer has totally violated the said conditions which were imposed while granting the approval.

12. The impugned award also discloses that the total market value of the land having been fixed at

Rs.3,05,95,405/- towards structure in the property and the compensation has been fixed to the extent of Rs.13,46,671/- towards the construction and embankment compensation has been fixed at 12,18,700/-.

13. In addition to above, the Land Acquisition Officer has also awarded the compensation to the tune of Rs.91,27,851/- towards the value of trees. It is not clarified as to whether these are the forest trees or also include fruit bearing trees. The Apex Court in **State of Haryana v/s Gurcharan Singh and Anr.** reported in AIR 1996 SC 106 had clearly ruled that compensation is the value of the acquired land and under no circumstances, the court should allow the compensation on the basis of nature of the land as well as fruit bearing trees. In other words the market value of the land is to be determined on the basis of the value of land but the value of fruit bearing trees can not be added thereto. Needless to say that in case of trees yielding forest produce are to be valued in addition to the value of the land. However, in the case in hand it is not clear whether the amount of Rs.91,27,851/- relates in entirety to the forest trees or also include fruit bearing trees. Once the Apex Court has laid down the law to the effect that the Land Acquisition Officer cannot take into

consideration value of fruit bearing trees while determining compensation on the basis of the value of the land in question, the Land Acquisition Officer has clearly acted in contravention with the law laid down by the Apex Court while awarding compensation of Rs.91,27,851/- in addition to the value of the land to the tune of Rs.3,05,95,405/-. For the reasons stated above, therefore, it is apparent that the act of the Land Acquisition Officer in the matter of fixation of award clearly disclose an abuse of powers which warrants interference by this court in the writ jurisdiction.

14. Bearing in mind the law laid down by the Apex Court and the concept of fraud in public law or administrative law, it is evident that the order passed by the Land Acquisition Officer in contravention of the conditions imposed while granting approval for the draft award by the Government and ignoring the law laid down by the Apex Court or this Court in relation to the procedure to be followed as well as the methodology to be adopted for the purpose of evaluating the value of land under acquisition, clearly amount to overstepping the limits of powers which the Land Acquisition Officer is authorised to exercise as well as it has resulted in defeating statutory provisions which were otherwise required to be

complied with, not only from the point of view of requirement of compliance of such statutory provisions but also bearing in mind that non compliance thereof could result in imposing unauthorised, illegal and unwarranted burden over the public exchequer and consequently it has resulted in an abuse of power as well as malafide exercise of such power and the discretion given to such authority under the said Act, and therefore, partakes colour of fraud in public law or administrative law, which not only warrants but justifies interference by this Court in writ jurisdiction.

15. The last question which arises for our consideration is as to what should be the order in the facts and circumstances of the case.

16. Once it is apparent that the impugned award is vitiated by the fraud, the same cannot be sustained and is liable to be quashed and set aside and the matter has to be remanded to the Land Acquisition Officer to re-assess the compensation payable to the interested persons in accordance with provisions of law bearing in mind the observations hereinabove.

17. Shri Kumbhakoni, learned Associate Advocate

General has also sought to challenge the impugned award while contending that it also discloses the fraud by the Land Acquisition Officer not only in relation to fixation of the compensation but also in relation to disbursement of the amount awarded thereunder. However, there are disputed questions of fact in that regard. Therefore, it will not be possible to adjudicate upon those issues. We leave open all the issues sought to be raised in that regard, and desist from expressing any opinion in that regard.

18. In the result, therefore, the petitions succeed for the reasons stated above. The matter is remanded to the Land Acquisition Officer, Sangli. Needless to say that Land Acquisition Officer to re-assess the compensation, shall not be the respondent No.280 but it should be by some other person to be appointed for that purpose. All the parties are entitled to produce any further evidence if they so desire in support of their respective claims. The Land Acquisition Officer should be appointed by the Government within a period of six weeks and pursuant thereto, notices shall be issued to all interested persons. The Land Acquisition Officer so appointed shall decide compensation to be awarded in the matter within a period of one year thereafter, after

hearing the parties and in accordance with the provisions of law. Meanwhile, the amount which is deposited shall continue to be remain so till the decision in the matter by way of award by the Land Acquisition Officer and shall be subject to the said award.

19. In case,the award in question happens to be adverse to the interest of interested persons, they shall be entitled to seek reference under section 18 of the said Act and in that case the amount shall remain invested till the disposal of such reference.

20. In the result therefore, Writ Petition No.1437 of 2002 partly succeeds and rule is made absolute in above terms.

21. The Writ Petition No.2932 of 2001 does not survive and is hereby dismissed. Rule therein is discharged with no order as to costs.

(R.M.S.KHANDEPARKAR,J)

(V.M.KANADE,J)